

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

WONDERWORK, INC.,

Debtor.

VINCENT A. SAMA, as Litigation Trustee
of the WW Litigation Trust,
Plaintiff,

- against -

BRIAN MULLANEY, HANA FUCHS,
THEODORE DYSART, RAVI KANT,
JOHN J. CONEYS, STEVEN LEVITT,
CLARK KOKICH, STEVEN RAPPAPORT,
RICHARD PRICE, and MARK ATKINSON,
Defendants.

Chapter 11

Case No. 16-13607-smb

Adv. Pro. No. 18-1873-smb

**NOTICE OF MOTION TO EXTEND
BRIAN MULLANEY'S DEADLINE TO
RESPOND TO COMPLAINT**

PLEASE TAKE NOTICE that a hearing on the annexed motion to extend Brian Mullaney's deadline to respond to the Complaint by sixty days, to April 2, 2019, pursuant to Rule 9006(b), will be held before the Honorable Stuart M. Bernstein, in Room 723 of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004, on February 7, 2019 at 10:00 a.m.

PLEASE TAKE FURTHER NOTICE that objections to the motion must be served on the undersigned so as to be received by January 31, 2019 at 4:00 p.m.

Dated: January 22, 2019
New York, New York

STORCH AMINI PC

/s/ Jeffrey Chubak
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Attorneys for Defendant Brian Mullaney

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:	Chapter 11
WONDERWORK, INC.,	Case No. 16-13607-smb
Debtor.	Adv. Pro. No. 18-1873-smb
VINCENT A. SAMA, as Litigation Trustee of the WW Litigation Trust, Plaintiff,	MOTION TO EXTEND BRIAN MULLANEY'S DEADLINE TO RESPOND TO COMPLAINT
- against - BRIAN MULLANEY, HANA FUCHS, THEODORE DYSART, RAVI KANT, JOHN J. CONEYS, STEVEN LEVITT, CLARK KOKICH, STEVEN RAPPAPORT, RICHARD PRICE, and MARK ATKINSON, Defendants.	

Defendant Brian Mullaney (“Mullaney”) hereby moves for an order, substantially in the form annexed hereto as Exhibit 1, extending his deadline to respond to the Complaint by sixty days, to April 2, 2019, pursuant to Rule 9006(b), and states:

1. The Complaint was filed December 28, 2018. The Summons was issued January 2, 2019. Absent an extension Mullaney’s deadline to respond to the Complaint is February 1, 2019, pursuant to Rule 7012(a).

2. The Complaint is 47-pages long and asserts ten claims for relief against Mullaney, namely, claims for breach of fiduciary duty and waste (Count 4), avoidance claims (Counts 5-9), breach of contract and unjust enrichment claims (Counts 10-11), and claims to disallow his scheduled claim for back pay (Counts 12-13).

3. The claims for relief are based principally upon the examiner’s 282-page report, filed November 3, 2017 [ECF No. 303], prepared at a cost of approximately \$2.3 million

(Complaint ¶122), which itself annexes thousands of pages of supporting material [ECF Nos. 336, 338-40, 353].

4. The Complaint also raises complex issues, such as the applicable standard on a claim for breach of fiduciary duty to a nonprofit Delaware corporation.

5. Further, under Section VI.A of the Debtor's primary D&O policy,¹ defense costs incurred without the insurer's prior approval are not covered thereby. Notwithstanding Mullaney's having advised the insurer of the Complaint and requested authorization to incur defense costs by letter, dated January 7, 2019, the insurer has not yet shared its view as to coverage or authorized Mullaney to incur defense costs. True copies of Mullaney's correspondence with the insurer to date are annexed hereto as Exhibit 2.

6. In addition, Mullaney's counsel Bijan Amini will be traveling overseas from February 13-25, 2019. Mr. Amini is also scheduled to attend full day hearings on his return, on February 26 and 27 and March 1, 2019.

7. Pursuant to Rule 9006(b), the period for responding to a complaint under Rule 7012 may be enlarged for cause shown. Mullaney submits the above-described reasons constitute cause for the extension requested hereby.

8. The undersigned requested the above 60-day extension from Plaintiff's counsel Peta Gordon prior to the holiday weekend, and further advised Ms. Gordon then of the status of discussions with the insurer. Plaintiff refused the requested extension and instead only agreed to a 30-day extension.

¹ The policy is annexed to the examiner's report as Exhibit 103 [ECF No. 338-1]. Section VI.A is on the page bates-stamped WON-EX 43073.

9. Plaintiff would not be prejudiced by the requested extension. Plaintiff waited until the day before the two-year anniversary of the petition date to commence this action, notwithstanding that the examiner's report was filed November 21, 2017 [ECF No. 303], and that the plan was confirmed September 21, 2018, and consummated October 24, 2018 [ECF Nos. 475, 490]. No harm will come from Mullaney's responding to the Complaint thirty days after the end of the thirty-day extension period to which Plaintiff agreed.

10. No prior request for the relief sought herein has been made to this Court or to any other court.

WHEREFORE, Mullaney's deadline to respond to the Complaint should be extended to April 2, 2019.

Dated: January 22, 2019
New York, New York

Respectfully submitted,

/s/ Jeffrey Chubak
Bijan Amini
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